

**NEWMAN | WILLIAMS**

A PROFESSIONAL CORPORATION

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Attorney for Defendants

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IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

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BRIAN J. STONE AND  
ELLEN A. STONE,  
Plaintiffs,

v.

TODD A. MARTIN AND  
JASON DUNLAP,  
Defendants

No. [3:15-CV-1632](#)

Jury Trial Demanded

Judge Mannion

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**Defendants' Statement of Facts  
In Support of Motion for Summary Judgment**

The defendants aver, pursuant to LR 56.1 that the following facts are not in dispute and may be considered by the court in support of their motion for summary judgment:

*The Parties*

1. The plaintiff, Brian Stone, is a licensed Pennsylvania attorney with offices in NY and in Pennsylvania.
2. The plaintiff, Ellen Stone, is Brian Stone's wife.
3. Todd Martin is the duly elected Sheriff of Monroe County.
4. Jason Dunlap, is a Monroe County Sheriff's deputy, employed by Monroe County.

*Stone's Property*

5. The Stones own a property along Route 611 in Tobyhanna Township, Monroe County comprised of approximately 75 acres. Stone affidavit, doc. [10](#), at ¶2A.<sup>1</sup>
6. The Stones' home and Brian Stone's Pennsylvania law office are adjacent to each other on the property.
7. The home and the law office are accessed by a shared driveway running from Route 611. Doc. [10](#), at ¶2D.

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<sup>1</sup> Although Stone's affidavit was stricken (Doc. [13](#)) as an improper response to the defendants' motion to dismiss, it is cited for the representations that Stone made about the factual background of his case.

8. An aerial view of Stones' property, courtesy of Google Maps, is depicted below and reflects the relative locations of Brian Stone's office and the Stones' home.



### *Signage*

9. At the Route 611 entrance to the property, Stone erected a sign advertising to the public that the property is the site of his law office.

10. A photograph of Stone's Law Office sign, which includes his phone number, is depicted below.



11. Stone erected a gate at the entrance to his driveway which was closed when Deputy Dunlap served process. Doc. [10](#), at ¶2E; [Complaint](#), at ¶8.

12. The Stones erected signs on their driveway leading to the law office and their home warning people to:

- a. Beware of the presence of a dog;





b. That hunting is forbidden;



c. That the speed limit is 15 mph;



d. That the property is private;



e. And to "keep out."





13. These signs are placed there permanently and remain posted even when Stone's law office is open for business.

*Rhode Island lawsuit*

14. The Monroe County Sheriff's Office was asked by a plaintiff, Latese T. Smith, in a Rhode Island lawsuit, to serve documents on Ellen Stone relating to a lawsuit filed against Ellen Stone in Rhode Island. The Sheriff's service form and the Rhode Island Notice of Suit form are depicted below.

DATE RECEIVED		DATE PROCESSED	
SHERIFF'S OFFICE 2015 MAY 29 AM 10:33 MONROE COUNTY, PA		<b>SHERIFF'S OFFICE</b> <b>MONROE COUNTY, PENNSYLVANIA</b> COURTHOUSE, STROUDSBURG, PA 18360	
MONROE COUNTY, PA <b>SHERIFF SERVICE</b> <b>PROCESS RECEIPT</b>		PLEASE TYPE OR PRINT LEGIBLY, INSURING READABILITY. MCSO ENV.# <b>G112176</b>	
1. PLAINTIFF/S/ <b>Latese T. Smith</b>		2. COURT NUMBER	
3. DEFENDANT/S/ <b>Ellen A. Stone</b>		4. TYPE OF WRIT OR COMPLAINT <b>Security Deposit Return</b>	
SERVE AT { 5. NAME OF INDIVIDUAL, COMPANY, CORPORATION, ETC. TO SERVICE OR DESCRIPTION OF PROPERTY TO BE LEVIED, ATTACHED OR SOLD. <b>Ellen A. Stone</b>		6. ADDRESS (Street or RFD, Apartment #, City, Boro, Twp, State and Zip Code) <b>6021 Route 115, Blakeslee, PA 18610</b>	
7. SERVICE: <input type="checkbox"/> PERSONAL <input checked="" type="checkbox"/> PERSON IN CHARGE <input type="checkbox"/> DEPUTIZE <input type="checkbox"/> CERT. MAIL <input type="checkbox"/> REGISTERED MAIL <input type="checkbox"/> FIRST CLASS MAIL <input type="checkbox"/> POSTED <input type="checkbox"/> PUBLICATION			
Now, _____, I, SHERIFF OF MONROE COUNTY, PA, do hereby deputize the SHERIFF of _____ County to execute this Writ and make return thereof according to law. This deputation being made at the request and risk of the plaintiff. _____ SHERIFF OF MONROE COUNTY			
8. POSTING REQUIREMENT: TAX CODE# _____ PIN# _____			
9. SPECIAL INSTRUCTIONS OR OTHER INFORMATION THAT WILL ASSIST IN EXPEDITING SERVICE:			
NOTE ONLY APPLICABLE ON WRIT OF EXECUTION: N.B. WAIVER OF WATCHMAN - Any deputy sheriff levying upon or attaching any property under within writ may leave same without a watchman, in custody of whomever is found in possession, after notifying person of levy or attachment, without liability on the part of such deputy or the sheriff to any plaintiff herein for any loss, destruction or removal of any such property before sheriff's sale thereof.			
10. SIGNATURE OF ATTORNEY or other ORIGINATOR requesting service on behalf of: <b>Adn</b> <input checked="" type="checkbox"/> PLAINTIFF <input type="checkbox"/> DEFENDANT		11. TELEPHONE NUMBER <b>773 263 5249</b>	
		12. DATE <b>5/27/15</b>	
SPACE BELOW FOR USE OF SHERIFF ONLY - DO NOT WRITE BELOW THIS LINE			
13. I ACKNOWLEDGE RECEIPT OF THE WRIT OR COMPLAINT AS INDICATED ABOVE		Signature of Authorized MCSO Deputy or Clerk and Title <b>Ellen</b>	
		14. Date Received <b>5/29/15</b>	
		15. Expiration/Hearing Date <b>6/29/15</b>	
I HEREBY CERTIFY AND RETURN:			
TYPE OF SERVICE: <input type="checkbox"/> PERSONAL <input type="checkbox"/> POST <input type="checkbox"/> RECHECK/LOCKOUT <input type="checkbox"/> COMPLETE LEVY <input type="checkbox"/> READ ORDER <input type="checkbox"/> OTHER/PERSON IN CHARGE NAME: _____ RELATIONSHIP: _____ ADDRESS SERVED, IF DIFFERENT FROM ABOVE: _____ <input type="checkbox"/> NO SERVICE REASON: _____			
DEPUTY: _____ DATE: _____ TIME: _____ MILEAGE: _____			



2015 JUL 27 PM 2:37 STAN ID: 37

FORGE COUNTY, PA



STATE OF RHODE ISLAND AND

## PROVIDENCE PLANTATIONS

**SMALL CLAIMS NOTICE OF SUIT - COMPLAINT**

Plaintiff Latese T. Smith	Civil Action File Number: 2SC-2015-0011
	Attorney for the Plaintiff Address of the Plaintiff's Attorney or the Plaintiff 821 Regulo Place #1714 Chula Vista, CA 91910
Defendant Ellen A. Stone	Address of the Defendant 6021 Route 115 Blakeslee, PA 18610

<input checked="" type="checkbox"/> Murray Judicial Complex 2nd Division District Court 45 Washington Square Newport, Rhode Island 02840-2913 (401) 841-8350	<input type="checkbox"/> Noel Judicial Complex 3rd Division District Court 222 Quaker Lane Warwick, Rhode Island 02886-0107 (401) 822-6750
<input type="checkbox"/> McGrath Judicial Complex 4th Division District Court 4800 Tower Hill Road Wakefield, Rhode Island 02879-2239 (401) 782-4131	<input type="checkbox"/> Garrahy Judicial Complex 6th Division District Court One Dorrance Plaza Providence, Rhode Island 02903-2719 (401) 458-5400

The Plaintiff(s) claims that the Defendant(s) owes \$ 2500.00 plus the cost of suit for the following reasons:

Unlawfully stopped payment on return security deposit  
Did not return security within 20 days of move out and  
walk-thru.

*Dunlap's Service of Process*

15. Deputy Dunlap walked down the Stones' driveway.

16. When Deputy Stone reached the law office building, the garage door in the building was open, Ellen Stone was visible from the open door, and she commented to Deputy Dunlap, "You found me."

17. Dunlap gave the Rhode Island legal paperwork to Ellen Stone at her husband's law office and then left the property.

18. Deputy Dunlap completed affidavits confirming his efforts to serve Mrs. Stone in the forms below:

Police Central - Prior Sheet

**MONROE COUNTY SHERIFF'S OFFICE**  
**STROUDSBURG, PA**  
 Field Notes for Service Process

**Service Information**

**Case:** 2SC-2015-00111 **File:** G112176  
**Document:** Summons  
**Defendant:** ELLEN A STONE **Service Expiration:** 6/29/2015  
**Aliases:** **Posting Expiration:**  
**Address Physical:** **Deputize:**  
**Address Mailing:** 6021 ROUTE 115  
 BLAKESLEE, PA 18610  
**Service Address(es):** 6021 ROUTE 115 BLAKESLEE, PA 18610

Brian P. Star

**Service Type**

ServiceType	ServiceStatus	ServiceInstructions	DeputizedAgencyName	Service Area
PERSONAL/PERSON IN CHARGE	PENDING			M

Total Number of Rows: 1

**Prior Service Information**

There is no data to display.

MAP Attached

**Notes**

Please fill out the out of state  
 AFFIDAVIT

- ① 6-8-15 9:58am JD Gated driveway Gate locked Left Card in box  
 ② 6-11-15 10:27am JD Same as first  
 ③ 6-16-15 11:23am JD Card still in the box  
 ④ 6-17-15 11:50-12:02am JD Same as line 3. Walked back to the house  
 I found a woman painting in the garage. I advised who I was  
 and stated I'm looking for Ellen Stone. She said "you found me".  
 At this point I heard footsteps at a fast pace upstairs.  
 A male came down the stairs fast. Max Stone put her hand out  
 towards him. He stated, didn't you see the posted signs at the  
 gate. I advised him I was allowed to enter his property  
 to serve Ellen Stone. I had served her prior to him coming  
 down the stairs. He said I'm an Attorney. I advised  
 him my job was done because I served Ellen. At this  
 point he wanted my name. I advised him. I already gave  
 it to Ellen. I then left to go back to my vehicle  
 before Mr. Stone escalated the situation.



**TODD A. MARTIN**  
Sheriff

570-420-3670  
FAX: 570-517-3870



**OFFICE OF THE SHERIFF  
COUNTY OF MONROE  
COURTHOUSE, STROUDSBURG, PA 18360-2189**

LATESE T SMITH	:	COMMONWEALTH OF PA
Primary Plaintiff	:	COUNTY OF MONROE
	:	
	:	
v.	:	CIVIL DIVISION
	:	CASE NO. 2SC-2015-00111
	:	
ELLEN A STONE	:	MCSO NO.G112176
Primary Defendant	:	

**SHERIFF'S SERVICE AFFIDAVIT OF RETURN**

AND NOW, 6/17/2015 at 11:00, I hereby CERTIFY and RETURN that I have served the within Summons upon ELLEN A STONE, Defendant, by personally handing to ELLEN A STONE, one true attested copy of the original Summons and making known to him/her the contents thereof at 6021 ROUTE 115 BLAKESLEE, PA 18610.

SUMMONS SMALL CLAIMS NOTICE OF SUIT-COMPLAINT SMALL CLAIMS NOTICE OF SUITE-ANSWER X2

SO ANSWERS,

Todd A. Martin, Sheriff

By: *TAM*

DEPUTY: DUNLAP, JASON; DEPUTY; C-  
10

Deposit:	\$150.00	Total Costs:	\$133.34	Refund:	\$16.66
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19. A photograph of Stone's law office where Deputy Dunlap served process is depicted below. Stone's public contact information is

on the door, including phone number, website address, and signage reflecting that the building houses the law office of Brian Stone and provides contact information for the public.





20. Deputy Dunlap never approached the Stones' home.

*Sheriff Martin*

21. Todd Martin was never on the Stones' property and the Stones make no such claim.



22. The Stones blame Martin for creating a policy that authorized a deputy sheriff to serve process on land posted with "no trespassing" signs.

23. The Stones allege no *Monell* claim against Monroe County and make no reference to suing defendants in their official capacities.

24. The defendants do not believe, based on conversations between counsel, that the Stones disagree with the facts set forth in this statement and that their dispute is entirely a question of law.

**NEWMAN, WILLIAMS, MISHKIN,  
CORVELEYN, WOLFE & FARERI, P.C.**

By: s/Gerard J. Geiger, Esq.  
Attorney ID: PA44099

Date: June 30, 2016

### **Certificate of Service**

I hereby certify that on this date, I served a copy of the foregoing document on the Brian J. Stone, Esq., individually, and as counsel for Ellen A. Stone via ECF.

**NEWMAN, WILLIAMS, MISHKIN,  
CORVELEYN, WOLFE & FARERI, P.C.**

By: s/Gerard J. Geiger, Esq.  
Attorney ID: PA44099

Date: June 30, 2016